

FRED M. BLUM, ESQ. (SBN101586)  
fblum@behblaw.com  
MICHAEL E. GALLAGHER, ESQ. (SBN 195592)  
mgallagher@behblaw.com  
EARL L. HAGSTROM (SBN 150958)  
ehagstrom@behblaw.com  
CHRISTOPHER DOW, ESQ. (SBN 250032)  
cdow@behblaw.com  
BASSI, EDLIN, HUIE & BLUM LLP  
500 Washington Street, Suite 700  
San Francisco, CA 94111  
Telephone: (415) 397-9006  
Facsimile: (415) 397-1339

Attorneys for Defendant and Third-Party Plaintiff  
WHITTAKER CORPORATION

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SANTA CLARITA VALLEY  
WATER AGENCY,  
  
Plaintiffs,  
  
vs.  
  
WHITTAKER CORPORATION,  
  
Defendants.

WHITTAKER CORPORATION,  
  
Third-Party Plaintiff,

vs.  
  
KEYSOR-CENTURY CORP., a  
California Corporation; and SAUGUS  
INDUSTRIAL CENTER, LLC, a  
Delaware Limited Liability  
Company,  
  
Third-Party Defendants.

Case No. 2:18-CV-6825-SB (RAOx)  
*Assigned to Hon. Stanley Blumenfeld, Jr.*

**WHITTAKER CORPORATION'S  
OBJECTIONS TO EVIDENCE  
OFFERED BY PLAINTIFF SANTA  
CLARITA VALLEY WATER  
AGENCY'S MOTION FOR  
SUMMARY JUDGMENT**

Date: January 8, 2021  
Time: 8:30 a.m.  
Dept.: 6C

Action Filed: August 8, 2018  
Trial Date: January 19, 2021

5265423

WHITTAKER CORPORATON (“Whittaker”) submits the following objections to the evidence filled by SANTA CLARITA VALLEY WATER AGENCY (“SCVWA”) in support of their motion for partial summary judgment.

**I. ABERCROMBIE DECLARATION**

<b><u>Evidence</u></b>	<b><u>Objection</u></b>	<b><u>Ruling</u></b>
<p>“In my experience, the discharge of well water to the Santa Clara River has not caused concern with citizens near the water discharge point or other citizens in general.”</p> <p><b>Abercrombie Declaration ¶ 6.</b></p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul> <p>Mr. Abercrombie does not know, and cannot possibly know, whether each and every citizen is concerned with the discharge of well water into the river. To the extent certain citizens have told Mr. Abercrombie that they are not concerned, these communications are inadmissible hearsay.</p>	Sustain/Overrule
<p>“As a result of the Whittaker Site releasing multiple contaminants, the DDW designated the groundwater near the</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul>	Sustain/Overrule

5265423

<p>Whittaker Site to be an ‘extremely impaired water source,’ which is subject to strict drinking water supply permit requirements pursuant to DDW policy 97-005.”</p> <p><b>Abercrombie Declaration ¶ 7.</b></p>	<ul style="list-style-type: none"> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Abercrombie, who fails to provide any curriculum vitae or other qualifications in his declaration, does not have the expertise to determine why the DDW designated the groundwater near the Whittaker Site to be an “extremely impaired water source.” Further, the DDW policy is based on a contaminate exceeding the MCL, and only perchlorate has exceeded the MCLs.</p> <p>Nor can he opine on whether the alleged contamination was caused by releases of contaminants at the Whittaker site as opposed to other sites. To the extent DDW made this opinion, the statement is hearsay.</p>	
<p>“There is no question that SCV Water has kept the stakeholders to this</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> </ul>	<p>Sustain/Overrule</p>

5265423

litigation informed of the response actions taken and response costs incurred due to Whittaker's groundwater contamination."

**Abercrombie Declaration ¶ 10.**

- Hearsay. Fed. R. Evid. 802
- Unqualified expert opinion. Fed. R. Evid. 104(a) and 702

Mr. Abercrombie is not qualified to opine on whether the stakeholders have been kept informed, as the term stakeholder has a legal meaning in the contest of NCP compliance. Further the statement is a mere conclusion without any support.

Nor can he opine on the presence of contaminants originated from the Whittaker Site as opposed to other locations or whether Whittaker polluted the groundwater.

To the extent Mr. Abercrombie is adopting this opinion from another source, the statement is hearsay. Further, Mr. Abercrombie is merely making a conclusory statement.

5265423

<p>1 “Currently, three of</p> <p>2 SCVWA's wells cannot</p> <p>3 be used for potable water</p> <p>4 because the groundwater</p> <p>5 is contaminated with</p> <p>6 perchlorate and/or</p> <p>7 volatile organic</p> <p>8 compounds (‘VOC’)</p> <p>9 from the Whittaker Site.”</p> <p>10 <b>Abercrombie</b></p> <p>11 <b>Declaration, Exhibit C,</b></p> <p>12 <b>¶ 2.</b></p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge.</li> <li>• Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion.</li> <li>• Fed. R. Evid. 104(a) and 702</li> </ul> <p>There is no foundation that the presence of VOC’s below the MCLs is preventing the wells from being used as potable water. The DDW policy, which forms the basis forms the opinions, is based on a contaminate exceeding the MCL, and only perchlorate has exceeded the MCLs.</p> <p>Mr. Abercrombie is not qualified to opine on whether the presence of contaminants in the wells originated from the Whittaker Site as opposed to other locations. To the extent Mr. Abercrombie is adopting this opinion from another source, the statement is hearsay.</p>	<p>Sustain/Overrule</p>
---	---	-------------------------

5265423

## II. ALVORD DECLARATION

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
<p>“DDW is requiring SCV Water to comply with DDW’s 97-005 Policy for Domestic Use of Extremely Impaired Sources because the V-201 extracts groundwater with multiple contaminants near the Whittaker-Bermite Site.”</p> <p><b>Alvord Declaration ¶ 4</b></p>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation</li> </ul> <p>Mr. Alvord has no personal knowledge as to why DDW is requiring SCV Water to comply with its 97-005 Policy and is merely speculating on its motives based on hearsay statements allegedly made by “representatives at DDW.”</p> <p>There is no foundation that the presence of VOC’s below the MCLs is preventing the wells from being used as potable water. The DDW policy, which forms the basis forms the opinions, is based on a contaminate exceeding the MCL, and only perchlorate has exceeded the MCLs.</p>	Sustain/Overrule

5265423

<p>1 “In particular, during the</p> <p>2 meetings with DDW that</p> <p>3 I attend, Ms. Orr and Mr.</p> <p>4 O’Keefe both informed</p> <p>5 me that SCV Water must</p> <p>6 address VOCs detected in</p> <p>7 groundwater pumped</p> <p>8 from V-201 before DDW</p> <p>9 will approve any new</p> <p>10 permit for the well to be</p> <p>11 used as a source of</p> <p>12 drinking water, even</p> <p>13 though the level currently</p> <p>14 detected in the well for</p> <p>15 TCE is below the MCL.</p> <p>16 DDW’s comments and</p> <p>17 requests for information</p> <p>18 confirm that DDW</p> <p>19 follows this practice for</p> <p>20 severely impaired sources</p> <p>21 to require removing the</p> <p>22 contaminant with</p> <p>23 treatment facilities or</p> <p>24 blending it to below</p> <p>25 detection levels. In the</p> <p>26 case of V-201, however,</p> <p>27 DDW has not permitted</p>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation</li> </ul> <p>This paragraph constitutes hearsay because Mr. Alvord repeats what Ms. Orr and Mr. O’Keefe allegedly stated at a meeting. These statements are offered for the truth of the matter asserted. Further, Mr. Alvord has no personal knowledge as to why DDW will not issue a permit to SCV Water and is merely relying on out-of-court statements to speculate on DDW’s motives.</p>	<p>Sustain/Overrule</p>
---	--	-------------------------

5265423

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	the same blending option to achieve the ‘operational goal’ of non-detect that is currently incorporated in SCV Water’s other wells that are contaminated with both perchlorate and VOCs. Based on these meetings with DDW, it is clear that DDW will not issue a permit for SCV Water to resume use of well V-201 for drinking water unless the VOCs in that well are addressed to DDW’s satisfaction.”		
18	<b>Alvord Declaration ¶ 8</b>		
19 20 21 22 23 24 25 26 27	“Finally, before DDW will issue a permit to for use of V-201 or other wells for drinking water, DDW will hold public hearings and we will participate in a public comment period. SCV Water’s takes its	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602.</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Irrelevant</li> </ul> <p>Mr. Alvord cannot know what DDW will do in the future prior to issuing a permit and is</p>	Sustain/Overrule

5265423



1 2 3 4 5 6 7 8	commitment to communicate with the public, and with DDW and other state agencies, very seriously.” <b>Alvord Declaration ¶ 10</b>	speculating. Mr. Alvord further cannot testify certainly that SVC Water will participate in a public hearing in the future. Finally, whether or not SCV Water takes its commitment seriously is irrelevant in determining whether it fulfills the commitment.	
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<b>Alvord Declaration, Exhibit A “Santa Clarita Valley Water Agency Regular Board Meeting Agenda”</b>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Irrelevant</li> <li>• Lack of Foundation</li> </ul> <p>Exhibit A to Mr. Alvord’s Declaration, constituting an “Amended Agenda” from a board meeting of SCV Water should be struck in its entirety. There is no indication of who authored the agenda. Mr. Alvord does not claim to have written the agenda nor does he identify who wrote it. Mr. Alvord’s declaration fails to lay foundation for the exhibit, failing to establish that he is competent to testify about it. The statements within the agenda are hearsay. Further, the fact that one</p>	Sustain/Overrule

5265423

	agenda contains a paragraph setting forth a procedure for the public to make written comments is irrelevant in establishing the public involvement necessary to comply with the national contingency plan.	
<b>Alvord Declaration, Exhibit B “News Release: Perchlorate Levels Reach Actionable Level at Out-of-Service Well”</b>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Irrelevant. Fed. R. Evid. 402</li> <li>• Prejudicial. Fed. R. Evid. 403</li> <li>• Lack of personal knowledge Fed. R. Evid. 602.</li> <li>• Lack of foundation</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Exhibit B to Mr. Alvord’s declaration should be struck in its entirety. The exhibit is a press release concerning Well V-205, apparently written by SCV Water’s Public Information Officer, Kathie Martin. The press release contains various statements attributed to other individuals. The press release is hearsay, as it is a statement by</p>	Sustain/Overrule

5265423

1 Kathie Martin. Within the  
2 statement are numerous instances  
3 of hearsay within hearsay, as Ms.  
4 Martin quotes other people and  
5 other sources throughout the  
6 press release. While Plaintiff may  
7 argue that the press release is not  
8 offered for the truth of the matter  
9 asserted and is being offered as  
10 “an example” of a press release,  
11 this argument is undercut by the  
12 fact that the press release  
13 concerns the very subject matter  
14 of this litigation—the alleged  
15 contamination of Well V-205.  
16 Whatever relevance this press  
17 release may have in showing a  
18 sample press release is  
19 outweighed by the unfair  
20 prejudice caused by the substance  
21 within the press release, which  
22 includes conclusions that  
23 attributes the contamination of  
24 the wells to Whittaker. Moreover,  
25 there is no showing that Ms.  
26 Martin is at all qualified to opine  
27 on the issues she offers in the  
28

5265423

	press release, including opinions concerning health issues related to perchlorate exposure.	
--	---	--

### III. STONE DECLARATION

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
<p>“Contamination from the Whittaker Bermite Site ("Whittaker Site") has impacted SCV Water in many ways. First, due to the high concentrations of multiple contaminants beneath and near the Whittaker Site, the California State Water Resources Control Board's Division of Drinking Water ("DDW") has designated the Saugus Formation as an extremely impaired water source, which significantly extends the time required to obtain a water supply permit.”</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Stone does not have the expertise to opine that the alleged contamination originated from the Whittaker Site as opposed to another property. To the extent someone else made this opinion and Mr. Stone is adopting it, the statement is hearsay. Further, Mr. Stone lacks personal knowledge of DDW’s rationale for designating the Saugus Formation as an extremely impaired water source.</p>	Sustain/Overrule

5265423

<b>Stone Declaration ¶ 4</b>		
<p>“SCV Water has taken many measures to mitigate the impacts of Whittaker's groundwater contamination on its production wells and to prevent the contamination from spreading further down gradient from the Whittaker Site to other wells. While DTSC has provided oversight of SCV Water's offsite groundwater activities, it has not actively engaged Whittaker to address the groundwater contamination that migrated from its site.”</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Stone does not have the expertise to opine that the alleged contamination originated from the Whittaker Site as opposed to another property. To the extent someone else made this opinion and Mr. Stone is adopting it, the statement is hearsay. Mr. Stone further lacks personal knowledge of what DTSC has addressed with Whittaker and lacks foundation to make this generalized statement.</p>	Sustain/Overrule
<b>Stone Declaration ¶ 6</b>	<p>Further, Mr. Stone’s opinion that DTSC has not been “actively engaged” is his opinion only as he is nether qualified to reach that conclusion nor does he present</p>	

5265423

	any evidence to support the conclusion.	
<p>“However, the project identified in the 2005 IRAP did not achieve the IRAP goals to contain the spread of perchlorate and to restore lost groundwater supply caused by contamination from the Whittaker Site.”</p> <p><b>Stone Declaration ¶ 7</b></p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Stone does not have the expertise to opine that the alleged contamination originated from the Whittaker Site as opposed to another property. To the extent someone else made this opinion and Mr. Stone is adopting it, the statement is hearsay.</p>	Sustain/Overrule
<p>“Instead of providing a five-year review, SCV Water proposed to submit an amendment to the 2005 IRAP to include both V-201 and V-205 as additional containment wells with the necessary treatment to address the perchlorate and VOC</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Stone repeating alleged statements from DDW concerning DDW’s determination</p>	Sustain/Overrule

5265423

1 2 3 4 5 6	contamination, which DDW has determined pose unacceptable health risks to potable water consumers.” <b>Stone Declaration ¶ 7</b>	constitutes inadmissible hearsay. Mr. Stone is not qualified to independently determine whether the water poses an unacceptable health risk to potable water consumers.	
7 8 9 10 11 12 13	“In that letter, Mr. Gill stated that DTSC agreed to SCV Water's proposal for an amendment to the 2005 IRAP.” <b>Stone Declaration ¶ 8</b>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> </ul> <p>Mr. Stone summarizes what Mr. Gill apparently said in a letter and offers the statement for the truth of the matter asserted. This constitutes inadmissible hearsay.</p>	Sustain/Overrule
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	“As stated in the 2005 IRAP, the objective of the remedy is to contain perchlorate contamination from the Site from impacting down gradient Saugus Formation production wells. The specific remedy was selected in anticipation that it would comply with State Water Resources Control	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Stone’s summary of what he contends the 2005 IRAP says constitutes hearsay. Mr. Stone lacks any personal knowledge of the motivation behind selecting the specific remedy because he did not begin working for Castaic</p>	Sustain/Overrule

5265423

1 Board Division of 2 Drinking Water ("DDW") 3 Policy 97-005 for 4 Extremely Impaired 5 water sources.” 6 <b>Stone Declaration,</b> 7 <b>Exhibit A, Letter from</b> 8 <b>Matthew Stone.</b>	Lake Water Agency until 2015, ten years after Kennedy Jenks authored the 2005 IRAP.	
9 “The IRAP remedy is 10 required to be reopened 11 because the remedy was 12 not effective in 13 containing the plume and 14 according to DDW is not 15 protective of human 16 health due to the volatile 17 organic compounds 18 ("VOCs") in the wells.” 19 <b>Stone Declaration,</b> 20 <b>Exhibit A, Letter from</b> 21 <b>Matthew Stone.</b>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Mr. Stone’s reiteration of what DDW allegedly determined in connection with the IRAP remedy constitutes hearsay. Mr. Stone lacks the qualifications to independently opine on this matter.</p>	Sustain/Overrule
23 <b>Stone Declaration,</b> 24 <b>Exhibit B, Letter from</b> 25 <b>Tajinder Gill, P.E.</b> 26 27	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> </ul> <p>The letter from Tajinder Gill of the DTSC should be excluded in its entirety. The letter is hearsay</p>	Sustain/Overrule

5265423



	as it is a statement, made by a declarant, out of court, offered to prove the truth of the matter asserted, specifically that DTSC agreed to SCV Water's proposal for an amendment to the 2005 IRAP. Further, the letter contains hearsay within hearsay as Mr. Gill relays statements made by unknown members of the Santa Clarita Valley Water Agency staff within his letter.	
--	--	--

#### IV. GEE DECLARATION

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
<b>Gee Declaration, Ex. F “Expert Report of Mark R. Trudell”</b>	<ul style="list-style-type: none"> <li>• Noncompliance with Fed. R. Civ. Pro. 56(e)</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Inadmissible expert testimony. Fed. R. Evid. 104(a) and 702</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> </ul> <p>Exhibit F, which constitutes a report by Mark R. Trudell should be struck in its entirety. Dr.</p>	Sustain/Overrule

5265423

Trudell did not execute his report under penalty of perjury, nor did he submit a declaration attesting to the facts contained in his report. This does not comply with Fed. R. Civ. Pro. § 56(e). “[F]or an expert opinion to be considered on summary judgment, it must be accompanied by a proper affidavit or deposition testimony; courts in the Ninth Circuit have routinely held that unsworn expert reports are inadmissible.” Sansi North America, LLC v. LG Electronics USA, Inc., 2019 WL 8168069 (C.D. Cal. 2019). “The substance of this report was not sworn to by the alleged expert. Therefore, the purported expert's report is not competent to be considered on a motion for summary judgment.” Fowle v. C&C Cola, 868 F.2d 59, 67 (3rd Cir. 1989) (finding that expert's report attached to the declaration of plaintiff's counsel

5265423

	does not comply with Rule 56(e), since the substance of the report was not sworn to by the alleged expert).	
<b>Gee Declaration, Ex. G “Expert Report of Richard J. Hughto”</b>	<ul style="list-style-type: none"> <li>• Noncompliance with Fed. R. Civ. Pro. 56(e)</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Inadmissible expert testimony. Fed. R. Evid. 104(a) and 702</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> </ul> <p>Exhibit G, which constitutes a report by Richard J. Hughto should be struck in its entirety. First, Dr. Hughto did not execute his report under penalty of perjury, nor did he submit a declaration attesting to the facts contained in his report. This does not comply with Fed. R. Civ. Pro. § 56(e). “[F]or an expert opinion to be considered on summary judgment, it must be accompanied by a proper affidavit or deposition testimony;</p>	Sustain/Overrule

5265423

1 courts in the Ninth Circuit have  
2 routinely held that unsworn  
3 expert reports are inadmissible.”  
4 Sansi North America, LLC v. LG  
5 Electronics USA, Inc., 2019 WL  
6 8168069 (C.D. Cal. 2019). “The  
7 substance of this report was not  
8 sworn to by the alleged expert.  
9 Therefore, the purported expert's  
10 report is not competent to be  
11 considered on a motion for  
12 summary judgment.”  
13 Fowle v. C&C Cola, 868 F.2d 59,  
14 67 (3rd Cir. 1989) (finding that  
15 expert's report attached to the  
16 declaration of plaintiff's counsel  
17 does not comply with Rule 56(e),  
18 since the substance of the report  
19 was not sworn to by the alleged  
20 expert).  
21 Second, Dr. Hughto’s report is  
22 essentially a summary of  
23 inadmissible facts. Dr. Hughto  
24 recites a historical recounting of  
25 the Whitaker Site based on his  
26 review of various periodicals and  
27 other documents. Dr. Hughto’s

28  
5265423

1		“Key Opinions” are merely	
2		recitations of facts gleaned from	
3		documents reviewed. “The law is	
4		clear, however, that an expert	
5		report cannot be used to prove the	
6		existence of facts set forth	
7		therein.” <u>In re Citric Acid</u>	
8		<u>Litigation</u> , 191 F.3d 1090, 1102	
9		(9th Cir. 1999); <u>Stonefire Grill,</u>	
10		<u>Inc. v. FGF Brands, Inc.</u> , 987 F.	
11		Supp.2d 1023, 1039 (C.D. Cal.	
12		2013) (“Tripoli lacks personal	
13		knowledge for most of the facts	
14		in his report and therefore could	
15		not testify to them to prove the	
16		truth of the matter. Once these	
17		inadmissible facts are excluded,	
18		there are very few opinions	
19		remaining which would require	
20		enlightenment from those having	
21		a specialized understanding of the	
22		subject involved in the dispute.”)	
23		For these reasons, Exhibit G of	
24		the Gee Declaration should be	
25		excluded in its entirety.	
26	<b>Gee Declaration,</b>	• Irrelevant. Fed. R. Evid. 802	Sustain/Overrule
27	<b>Exhibit Q, Whitaker’s</b>	• More prejudicial than probative	
28			

5265423

<p><b>Responses to SCVWA's Interrogatories, Set Two</b></p>	<p>Exhibit Q has no relevancy since it is only the assertion of proper objections to interrogatories served by SCVWA. The interrogatories were improper as they were in violation Rule 33, which limits Plaintiff to 25 interrogatories. Each interrogatory effectively contained over 50 subparts since it asked for responses to each affirmative defense. Whittaker properly objected and provided a general response.</p>	
<p><b>Gee Declaration, Exhibit W, Email exchange between James Saenz, Karen Wong, and Lillian Luong.</b></p>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of Foundation</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> </ul> <p>Exhibit W of Mr. Gee's Declaration constitutes two emails dated December 7, 2010. The first email is from Karen Wong at the California Department of Public Health to Kames Saenz at the Valencia</p>	<p>Sustain/Overrule</p>

5265423

	<p>Water Company. The second is a reply from Mr. Saenz to Ms. Wong. The statements contained in these emails are hearsay. They are made by declarants outside of court and offered to prove the truth of the matter asserted, specifically, that Well 201 was taken offline on September 1, 2010.</p> <p>Further, there is no foundation as to the authenticity of the emails.</p>	
<p>“Saugus Well 1 and Saugus Well 2 are drinking water wells that were shut down in 1997 because of perchlorate contamination that had migrated from the Whittaker-Bermite property in Santa Clarita. After extensive analysis, CLWA oversaw the design and construction of a water treatment system to remove</p>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702</li> </ul> <p>Exhibit X is a Notice of Public Comment, which was written by an unknown author. The Notice is hearsay, as it is a statement by an unknown declarant offered to prove the truth of the matter asserted, including the contention</p>	<p>Sustain/Overrule</p>

5265423

<p>perchlorate from these wells. CDPH must issue a permit amendment to CLWA before this water may be served to the public. Because of the perchlorate contamination of these wells, CDPH has classified these wells as “Extremely Impaired Sources” and followed a special meeting process, which includes a public comment period and public meeting.”</p> <p><b>Gee Declaration, Exhibit X, Notice of Public Comment Period.</b></p>	<p>that CDPH classified the wells as “Extremely Impaired Sources” and that the contamination migrated from the Whittaker site. Further, there is no showing that whoever wrote this Notice is at all qualified to opine on the issues offered therein, including opinions concerning where the alleged contamination originated.</p>	
<p><b>Gee Declaration, Exhibit Y, Letter from Jeff O’Keefe to Brian Folsom.</b></p>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of Foundation</li> <li>• Lack of personal knowledge.</li> </ul> <p>Fed. R. Evid. 602</p> <p>Exhibit Y of Mr. Gee’s Declaration constitutes a letter</p>	<p>Sustain/Overrule</p>

5265423



	<p>dated December 30, 2010, which is purportedly authored by Jeff O’Keefe at the California Department of Public Health to Brian Folsom at Castaic Lake Water Agency. Attached to the letter are excerpts from a water supply permit and engineering report. “As required by Rule 56, documentary materials need authentication through affidavits or declarations from individuals with personal knowledge of the document.” <u>Id.</u> There is nothing in Mr. Gee’s declaration to establish the document is what it purports to be.</p>	
<p><b>Gee Declaration, Exhibit Z, Press release.</b></p>	<p>Hearsay. Fed. R. Evid. 802                      Prejudicial. Fed. R. Evid. 403                      Lack of personal knowledge. Fed. R. Evid. 602                      Lack of foundation                      Unqualified expert opinion. Fed. R. Evid. 104(a) and 702                        Exhibit Z to Mr. Gee’s declaration should be struck in its</p>	<p>Sustain/Overrule</p>

5265423

	<p>entirety. The exhibit is a press release concerning detection of perchlorate in Well V-201, apparently written by an unknown person on behalf of SCV Water. The press release contains various statements attributed to other individuals. The press release is hearsay, as it is a statement by an unknown declarant. Within the statement are numerous instances of hearsay within hearsay, as the press release quotes other people and other sources throughout. Moreover, there is no showing that whoever wrote this press release is at all qualified to opine on the issues offered therein, including opinions concerning where the alleged contamination originated.</p>	
<p><b>Gee Declaration, Exhibit AC, Saugus Formation Volatile Organic Compound Investigation Report</b></p>	<ul style="list-style-type: none"> <li>• Lack of foundation</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of personal knowledge Fed. R. Evid. 602.</li> </ul>	<p>Sustain/Overrule</p>

5265423

- Unqualified Expert Opinion.  
Fed. R. Evid. 104(a) and 702
- Noncompliance with Fed. R.  
Civ. Pro. 56(e)

Exhibit AC should be stuck in its entirety. First, the report is not executed under penalty of perjury by the authors. “The substance of this report was not sworn to by the alleged expert. Therefore, the purported expert's report is not competent to be considered on a motion for summary judgment.” Fowle v. C&C Cola, 868 F.2d 59, 67 (3rd Cir. 1989) (finding that expert's report attached to the declaration of plaintiff's counsel does not comply with Rule 56(e), since the substance of the report was not sworn to by the alleged expert).

Second, there is no indication of what credentials or expertise the authors of this report possess that would qualify them to make the opinions contained in this report.

5265423

<p><b>Gee Declaration, Exhibit AD, Letter from Jenny Anderson to Cliff Cheng</b></p>	<ul style="list-style-type: none"> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Lack of Foundation.</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> </ul> <p>Exhibit AD of Mr. Gee's Declaration constitutes a letter dated January 22, 2018, which is purportedly authored by Jenny Anderson at SVC Water to Cliff Cheng at the DDW. The letter contains inadmissible hearsay statements of Ms. Anderson that are offered to prove the truth of the matters asserted, namely the status of Well 205. The letter should be excluded entirely.</p>	<p>Sustain/Overrule</p>
--	--	-------------------------

**V. ZELIKSON DECLARATION**

<u><b>Evidence</b></u>	<u><b>Objection</b></u>	<u><b>Ruling</b></u>
<p><b>Zelikson Declaration ¶ 3 (2:23-3:3).</b> SCV Water has purchased replacement water for its supply wells V-201 and V-205 due to perchlorate</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Unreliable/improper expert testimony.</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul>	<p>Sustain/Overrule</p>

5265423

1 contamination of their  
2 respective water supplies. SCV Water’s purchase of  
3 water to replace these  
4 perchlorate-contaminated  
5 wells was and is a  
6 necessary time critical  
7 removal action that is  
8 specifically contemplated  
9 in 40 C.F.R. §  
10 300.415(e)(9). SCV  
11 Water has an immediate  
12 and ongoing obligation to  
13 provide safe and reliable  
14 drinking water to its  
15 customers while also  
16 maintaining compliance  
17 with an Amended  
18 Domestic Water Supply  
19 Permit (“Drinking Water  
20 Permit”) issued by the  
21 California State Water  
22 Resources Control Board  
23 Division of Drinking  
24 Water (“DDW”) and its  
25 predecessors.  
26  
27  
28

Substantial NCP compliance is a question of law and an experts only role is to supply facts for the court to consider. *La.-Pac. Corp. v. ASARCA Inc.*, 24 F.3d 1565, 1576 (9<sup>th</sup> Cir. 1994). Once the factual details regarding SCVWA's conduct been established, “the court decides—as a matter of law—whether those efforts substantially comply with the NCP.” *Id.*; *PMC, Inc. v. Sherwin-Williams Co.*, 1997 WL 223060, at \*9 (N.D.Ill. Apr.29, 1997) (rejecting expert opinion regarding whether actions substantially complied with public participation requirement because this “is a question of law”), *vacated in part on other grounds*, 151 F.3d 610 (7th Cir.1998). Mr. Zelikson’s opinion that there has been substantial compliance with the NCP is

5265423

1 irrelevant and has been  
2 previously struck in other  
3 actions. *Aviall Services, Inc. v.*  
4 *Cooper Industries, L.L.C.*, 572  
5 F. Supp. 2d 673, 695 (N.D. Tx.  
6 2008). The Court did find that  
7 expert opinion is not entirely  
8 irrelevant.

9  
10 Mr. Zelikson's opinions fail to  
11 show reasoning for his  
12 conclusions. "The chief value of  
13 an expert's testimony rests upon  
14 the material from which his  
15 opinion is fashioned and the  
16 reasoning by which he progresses  
17 from his material to  
18 his conclusion." McCarrick v.  
19 Pallares, 2020 WL 6800422 (E.D.  
20 Cal. November 19, 2020)  
21 (quoting People v. Drew, (1978)  
22 Cal.3d 333, 350). Here, Mr.  
23 Zelikson alleges a fact in which  
24 he does not have personal  
25 knowledge to make, nor does he  
26 identify his source of information.  
27 He then concludes that the fact  
28

5265423

	complies with the regulation without providing any reasoning as to why.	
<p><b>Zelikson Declaration ¶ 3 (3:3-8).</b> I have discussed the impacts of shutting down a contaminated well with SCV Water’s Chief Operating Officer, Keith Abercrombie. SCV Water must notify the DDW of any well that is shut down due to contamination. Upon shutting down a well, SCV Water seamlessly replaces the lost well water with purchased water so that its consumers’ water supply is not impacted.</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Unreliable/improper expert testimony.</li> <li>• Hearsay Fed. R. Evid. 802.</li> </ul> <p>Mr. Zelikson’s opinions, based on hearsay evidence and unreliable facts, should not be considered. “[A]n expert opinion cannot be based on assumptions of fact without evidentiary support, or on speculative or conjectural factors.” <u>Abarca v. Franklin County Water Dist.</u>, 761 F. Supp.2d 1007, 1023 (E.D. Cal. 2011) “The law is clear, however, that an expert report cannot be used to prove the existence of facts set forth therein.” <u>In re Citric Acid Litigation</u>, 191 F.3d 1090, 1102 (9th Cir. 1999). Mr. Zelikson should not be able to</p>	Sustain/Overrule

5265423

	offer facts concerning SCV Water's obligations merely because Mr. Abercrombie told Mr. Zelikson that those were its obligations.	
<b>Zelikson Declaration ¶ 3 (3:8-20).</b> While SCV Water's well shutdown procedure and replacement water purchases are in substantial compliance with the Community Relations requirement of 40 C.F.R. §300.415(n) given these site-specific circumstances, SCV Water's public outreach efforts also provide the public with notification of short-term and long-term impacts of its well shutdown activities. SCV Water has notified the community of the presence of perchlorate contamination and the	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation</li> <li>• Unreliable/improper expert testimony</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul> <p>Substantial NCP compliance is a question of law and an experts only role is to supply facts for the court to consider. <i>La.-Pac. Corp. v. ASARCA Inc.</i>, 24 F.3d 1565, 1576 (9<sup>th</sup> Cir. 1994). Once the factual details regarding SCVWA's conduct been established, "the court decides—as a matter of law—whether those efforts substantially comply with the NCP." <i>Id.</i>; <i>PMC, Inc. v. Sherwin-Williams Co.</i>, 1997 WL 223060, at *9 (N.D.Ill.</p>	Sustain/Overrule

5265423



<p>1 shutdown of wells V-201</p> <p>2 and V-205 through</p> <p>3 annual water reports,</p> <p>4 information sheets, and</p> <p>5 press releases issued</p> <p>6 directly to the public</p> <p>7 and/or made publicly</p> <p>8 available on its website.</p> <p>9 Further, SCV Water</p> <p>10 conducts monthly</p> <p>11 technical meetings</p> <p>12 pursuant to the 2007</p> <p>13 Castaic Lake Water</p> <p>14 Agency Litigation</p> <p>15 Settlement Agreement</p> <p>16 (“2007 Settlement</p> <p>17 Agreement”) which</p> <p>18 Whittaker attends as the</p> <p>19 party responsible for the</p> <p>20 contamination. DDW and</p> <p>21 the California</p> <p>22 Department of Toxic</p> <p>23 Substances Control</p> <p>24 (“DTSC”) also attend the</p> <p>25 monthly technical</p> <p>26 meetings.</p>	<p>Apr.29, 1997) (rejecting expert</p> <p>opinion regarding whether</p> <p>actions substantially complied</p> <p>with public participation</p> <p>requirement because this “is a</p> <p>question of law”), <i>vacated in</i></p> <p><i>part on other grounds</i>, 151 F.3d</p> <p>610 (7th Cir.1998).</p> <p>Mr. Zelikson’s opinion that</p> <p>there has been substantial</p> <p>compliance with the NCP is</p> <p>irrelevant and has been</p> <p>previously struck in other</p> <p>actions. <i>Aviall Services, Inc. v.</i></p> <p><i>Cooper Industries, L.L.C.</i>, 572</p> <p>F. Supp. 2d 673, 695 (N.D. Tx.</p> <p>2008). The Court did find that</p> <p>expert opinion is not entirely</p> <p>irrelevant.</p> <p>Mr. Zelikson’s opinions are based</p> <p>on unreliable facts and fail to</p> <p>show reasoning for his</p> <p>conclusions. “The chief value of</p> <p>an expert's testimony rests upon</p> <p>the material from which his</p>	
---	--	--

5265423

	<p>opinion is fashioned and the reasoning by which he progresses from his material to his conclusion.” <u>McCarrick v. Pallares</u>, 2020 WL 6800422 (E.D. Cal. November 19, 2020) (quoting <u>People v. Drew</u>, (1978) 22 Cal.3d 333, 350). Here, Mr. Zelikson states the community outreach in which SCV Water has allegedly undertaken. He then concludes that these actions comply with the community relations requirement of a regulation. He fails to provide any reasoning on why these efforts comply with the regulation he cites. The opinion fails to assist a trier of fact determine compliance.</p>	
<p><b>Zelikson Declaration ¶ 3(3:21-25).</b> Finally, SCV Water adequately documented the associated costs in the form of calculations prepared by Keith</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Unreliable/improper expert testimony Fed. R. Evid. 104(a) and 702.</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul>	<p>Sustain/Overrule</p>

5265423

Abercrombie using a methodology previously used to calculate replacement water losses in the 2007 Settlement Agreement in substantial compliance with the Documentation requirement of 40 C.F.R. §300.160.

Substantial NCP compliance is a question of law and an experts only role is to supply facts for the court to consider. *La.-Pac. Corp. v. ASARCA Inc.*, 24 F.3d 1565, 1576 (9<sup>th</sup> Cir. 1994). Once the factual details regarding SCVWA's conduct been established, “the court decides—as a matter of law—whether those efforts substantially comply with the NCP.” *Id.*; *PMC, Inc. v. Sherwin-Williams Co.*, 1997 WL 223060, at \*9 (N.D.Ill. Apr.29, 1997) (rejecting expert opinion regarding whether actions substantially complied with public participation requirement because this “is a question of law”), *vacated in part on other grounds*, 151 F.3d 610 (7<sup>th</sup> Cir.1998).

Mr. Zelikson’s opinion that there has been substantial

5265423

1 compliance with the NCP is  
2 irrelevant and has been  
3 previously struck in other  
4 actions. *Aviall Services, Inc. v.*  
5 *Cooper Industries, L.L.C.*, 572  
6 F. Supp. 2d 673, 695 (N.D. Tx.  
7 2008).

8  
9 Mr. Zelikson baselessly  
10 concludes that Mr.  
11 Abercrombie's methodology to  
12 calculate replacement water  
13 losses advanced in Mr.  
14 Abercrombie's affidavit  
15 constitutes adequate  
16 documentation of associated  
17 costs. Mr. Zelikson admits that he  
18 is unaware of the equations used  
19 by Mr. Abercrombie and that the  
20 results can be as much as 50%  
21 off. Trowbridge Decl. ¶ 33, Ex.  
22 AE, Zelikson Depo., at 123:15-  
23 126:10, 126:19-129:12.

24  
25 Mr. Zelikson does not provide  
26 any reasoning for why this  
27 method complies with the  
28

5265423

	<p>regulation cited. As set forth below, the methodology advanced in Mr. Abercrombie’s declaration is fundamentally flawed. Without reasoning, Mr. Zelikson’s opinions are not helpful and should not be considered. “The chief value of an expert's testimony rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion.” <u>McCarrick v. Pallares</u>, 2020 WL 6800422 (E.D. Cal. November 19, 2020) (quoting <u>People v. Drew</u>, (1978) 22 Cal.3d 333, 350).</p>	
<p><b>Zelikson Declaration ¶ 4 (4:13-24).</b> While SCV Water’s operation of the PTF and associated purchase and discharge of blend water to the river is in substantial compliance</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation.</li> <li>• Unreliable/improper expert testimony. Fed. R. Evid. 104(a) and 702</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul>	<p>Sustain/Overrule</p>

5265423

with the Community Relations requirement of 40 C.F.R. §300.415(n) given these site-specific circumstances, SCV Water’s public outreach efforts also provide the public with notification of short-term and long-term impacts of its discharge and purchased blend water activities, including submitting quarterly reports to the RWQCB and notifying the community of its NPDES Permit violations through a public information sheet made available on SCV Water’s website. The quarterly reports and violation report are also publicly available through the State Water Resources Control

Substantial NCP compliance is a question of law and an experts only role is to supply facts for the court to consider. *La.-Pac. Corp. v. ASARCA Inc.*, 24 F.3d 1565, 1576 (9<sup>th</sup> Cir. 1994). Once the factual details regarding SCVWA's conduct been established, “the court decides—as a matter of law—whether those efforts substantially comply with the NCP.” *Id.*; *PMC, Inc. v. Sherwin-Williams Co.*, 1997 WL 223060, at \*9 (N.D.Ill. Apr.29, 1997) (rejecting expert opinion regarding whether actions substantially complied with public participation requirement because this “is a question of law”), *vacated in part on other grounds*, 151 F.3d 610 (7th Cir.1998).

Mr. Zelikson’s opinion that there has been substantial compliance with the NCP is

5265423

Board, California Integrated Water Quality System Project website. Further, this information is shared with all attendees at SCV Water's monthly technical meetings pursuant to the 2007 Settlement Agreement.

irrelevant and has been previously struck in other actions. *Aviall Services, Inc. v. Cooper Industries, L.L.C.*, 572 F. Supp. 2d 673, 695 (N.D. Tx. 2008).

Moreover there is no basis for the opinion since he does not establish that any of the sources that he claims satisfied the public participation requirements asked for comment or even discussed SCVWA's decision to purchase water from the State Water Project. 126:19-129:12.

Mr. Zelikson's opinions are based on unreliable facts and fail to show reasoning for his conclusions. "The chief value of an expert's testimony rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion." McCarrick v.

5265423

	<p><u>Pallares</u>, 2020 WL 6800422 (E.D. Cal. November 19, 2020) (quoting <u>People v. Drew</u>, (1978) 22 Cal.3d 333, 350). Here, Mr. Zelikson states the community outreach in which SCV Water has allegedly undertaken. He then concludes that these actions comply with the community relations requirement of a regulation. He fails to provide any reasoning on why these efforts comply with the regulation he cites. The opinion fails to assist a trier of fact determine compliance.</p>	
<p><b>Zelikson Declaration ¶ 4 (4:24-5:4)</b> Finally, SCV Water adequately documented the associated costs in the form of calculations prepared by Keith Abercrombie using a methodology previously used to calculate replacement water losses</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation</li> <li>• Unreliable/improper expert testimony. Fed. R. Evid. 104(a) and 702</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul> <p>Substantial NCP compliance is a question of law and an experts only role is to supply facts for the</p>	<p>Sustain/Overrule</p>

5265423



in the 2007 Settlement Agreement in substantial compliance with the Documentation requirement of 40 C.F.R. §300.160. Those calculations are discussed further in the Declaration of Keith Abercrombie in Support of Plaintiff Santa Clarita Valley Water Agency's Replacement and Blend Water Damages, which is attached to my expert report. A true and correct copy of my report, including Mr. Abercrombie's declaration, is attached hereto as Exhibit A.

**Zelikson Declaration ¶ 4**

court to consider. *La.-Pac. Corp. v. ASARCA Inc.*, 24 F.3d 1565, 1576 (9<sup>th</sup> Cir. 1994). Once the factual details regarding SCVWA's conduct been established, "the court decides—as a matter of law—whether those efforts substantially comply with the NCP." *Id.*; *PMC, Inc. v. Sherwin-Williams Co.*, 1997 WL 223060, at \*9 (N.D.Ill. Apr.29, 1997) (rejecting expert opinion regarding whether actions substantially complied with public participation requirement because this "is a question of law"), *vacated in part on other grounds*, 151 F.3d 610 (7<sup>th</sup> Cir.1998).

Mr. Zelikson's opinion that there has been substantial compliance with the NCP is irrelevant and has been previously struck in other actions. *Aviall Services, Inc. v.*

5265423

1 *Cooper Industries, L.L.C.*, 572  
2 F. Supp. 2d 673, 695 (N.D. Tx.  
3 2008).

4  
5 Mr. Zelikson baselessly  
6 concludes that Mr.  
7 Abercrombie's methodology to  
8 calculate replacement water  
9 losses advanced in Mr.  
10 Abercrombie's affidavit  
11 constitutes adequate  
12 documentation of associated  
13 costs. Mr. Zelikson admits that he  
14 is unaware of the equations used  
15 by Mr. Abercrombie and that the  
16 results can be as much as 50%  
17 off. Trowbridge Decl. ¶ 33, Ex.  
18 AE, Zelikson Depo., at 123:15-  
19 126:10, 126:19-129:12. Mr.  
20 Zelikson does not provide any  
21 reasoning for why this method  
22 complies with the regulation  
23 cited.

24  
25 Without reasoning, Mr.  
26 Zelikson's opinions are not  
27 helpful and should not be  
28

5265423

	<p>considered. “The chief value of an expert's testimony rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion.” <u>McCarrick v. Pallares</u>, 2020 WL 6800422 (E.D. Cal. November 19, 2020) (quoting <u>People v. Drew</u>, (1978) 22 Cal.3d 333, 350).</p>	
<p><b>Zelikson Declaration ¶ 5.</b> Since beginning operation of the Saugus Perchlorate Treatment Facility (“SPTF”) and PTF, SCV Water has been obligated to meet the requirements of the Drinking Water Permit and meet the applicable or relevant and appropriate requirements (“ARARs”) for the perchlorate cleanup pursuant to 40 C.F.R.</p>	<ul style="list-style-type: none"> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Lack of foundation</li> <li>• Unreliable/improper expert testimony. Fed. R. Evid. 104(a) and 702</li> <li>• Hearsay. Fed. R. Evid. 802</li> </ul> <p>Paragraph 5 of Mr. Zelikson’s declaration should be struck in its entirety. Mr. Zelikson has no personal knowledge concerning the actions SCV Water took and Mr. Zelikson fails to identify the source of the proffered</p>	<p>Sustain/Overrule</p>

5265423

<p>§300.400(e) and (g). SCV Water undertook several actions to meet these obligations, including:</p> <p>a. DDW-directed efforts to reduce volatile organic compound (“VOC”) concentrations in SPTF-treated water, b. Application for an amendment to the Drinking Water Permit to include PTF-treated water, c. Preparation of a 2015 <i>Saugus Formation Volatile Organic Compound Investigation Report</i> (“VOC Investigation Report”) by CH2MHill to identify potential sources of VOCs threatening SCV Water’s compliance with the Drinking Water Permit, and d. Preparation of a 2020</p>	<p>information. Without establishing any personal knowledge concerning the treatment facility’s operations, or what Mr. Zelikson reviewed to make these factual assertions, there is no foundation for where these facts came from. “The law is clear, however, that an expert report cannot be used to prove the existence of facts set forth therein.” <u>In re Citric Acid Litigation</u>, 191 F.3d 1090, 1102 (9th Cir. 1999). Without personal knowledge or an identified source, the facts asserted by Mr. Zelikson in this paragraph are without foundation and are not properly considered within an expert report.</p> <p>Moreover, substantial NCP compliance is a question of law and an experts only role is to supply facts for the court to consider. <i>La.-Pac. Corp. v. ASARCA Inc.</i>, 24 F.3d 1565,</p>	
--	---	--

5265423

<p>1 draft <i>Engineering</i></p> <p>2 <i>Evaluation/Cost Analysis</i></p> <p>3 (“EE/CA”) by Advisian</p> <p>4 to evaluate alternatives to</p> <p>5 address the perchlorate</p> <p>6 and VOCs threatening</p> <p>7 SCW Water’s compliance</p> <p>8 with the Drinking Water</p> <p>9 Permit and preventing</p> <p>10 issuance of an</p> <p>11 amendment to the</p> <p>12 Drinking Water Permit to</p> <p>13 accommodate the PTF.</p>	<p>1576 (9<sup>th</sup> Cir. 1994). Once the</p> <p>factual details regarding</p> <p>SCVWA's conduct been</p> <p>established, “the court decides—</p> <p>as a matter of law—whether</p> <p>those efforts substantially</p> <p>comply with the NCP.” <i>Id.</i>;</p> <p><i>PMC, Inc. v. Sherwin–Williams</i></p> <p><i>Co.</i>, 1997 WL 223060, at *9</p> <p>(N.D.Ill. Apr.29, 1997)</p> <p>(rejecting expert opinion</p> <p>regarding whether actions</p> <p>substantially complied with</p> <p>public participation requirement</p> <p>because this “is a question of</p> <p>law”), <i>vacated in part on other</i></p> <p><i>grounds</i>, 151 F.3d 610 (7<sup>th</sup></p> <p>Cir.1998).</p> <p>Mr. Zelikson’s opinion that</p> <p>there has been substantial</p> <p>compliance with the NCP is</p> <p>irrelevant and has been</p> <p>previously struck in other</p> <p>actions. <i>Aviall Services, Inc. v.</i></p> <p><i>Cooper Industries, L.L.C.</i>, 572</p>	
---	---	--

5265423

	F. Supp. 2d 673, 695 (N.D. Tx. 2008).	
All references to the 2020 draft Engineering Evaluation/Cost Analysis (“EE/CA”) in the Zelikson Declaration and information derived therefrom. Pages 5, 30, 35, 38, 40, 41, 45, 46	<ul style="list-style-type: none"> <li>• Failure to disclose document in discovery. Fed. R. Civ. Pro. 37</li> <li>• Lack of foundation.</li> </ul> <p>Defendant has specifically requested Plaintiff, on several occasions, to produce the 2020 draft Engineering Evaluation/Cost Analysis in discovery. To date, Plaintiff has refused, despite multiple attempts to meet and confer. The discovery dispute is waiting to be heard in an informal discovery conference. The non-disclosure of a document is a basis for exclusion from evidence. “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a</p>	Sustain/Overrule

5265423

	<p>motion . . .” Fed. R. Civ. Pro. 37(c)(1). It would be fundamentally unfair to allow Plaintiff to provide a document to its expert witness but refuse to produce the document to Defendant in discovery. The information gleaned by Mr. Zelikson from the EE/CA should be struck.</p>	
<p><b>Zelikson Declaration, Exhibit A, Declaration of Keith Abercrombie (pp 85-91)</b></p>	<ul style="list-style-type: none"> <li>• Lack of foundation</li> <li>• Lack of personal knowledge. Fed. R. Evid. 602</li> <li>• Hearsay. Fed. R. Evid. 802</li> <li>• Unqualified expert opinion Fed. R. Evid. 104(a) and 702.</li> </ul> <p>Keith Abercrombie’s Declaration, which was submitted in support of Plaintiff’s Replacement and Blend Water Damages should be excluded in its entirety.</p> <p>In the declaration, Mr. Abercrombie purports to set forth a formula to calculate the cost of replacement and blend damages.</p>	<p>Sustain/Overrule</p>

5265423

1 However, he refers to the  
2 calculations only as estimates,  
3 and Mr. Zelikson conceded that  
4 the results may be off by as much  
5 as 50%. Trowbridge Decl. ¶ 33,  
6 Ex. AE, Zelikson Depo., at  
7 123:15-126:10.

8  
9 In reality, the declaration is  
10 merely a series of estimated  
11 quantities with no explanation of  
12 how the estimates were derived  
13 and without any documentary  
14 support for the estimates. The  
15 numbers Mr. Abercrombie comes  
16 up with are utterly without  
17 foundation. Additionally, there is  
18 no evidence within the  
19 declaration that Mr. Abercrombie  
20 possesses the expertise to make  
21 the estimations and opinions  
22 contained in his declaration.

23  
24 Date: December 14, 2020

BASSI, EDLIN, HUIE & BLUM LLP

25 By: /s/Michael E. Gallagher

26 MICHAEL E. GALLAGHER

27 Attorneys for Defendant and Third-Party  
28 Plaintiff WHITTAKER CORPORATION

5265423